

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.219 of 2015
and M.P.No.1 of 2015
and M.P.No.2 of 2015

AR.A.S. & P.V.P.V.Motors Erode Pvt.Ltd.,
Rep. By its Managing Director
N.Maheswari
No.203, Veerappam Palayam Pirivu
Perundurai Main Road, Thindal(PO)
Erode-638 009. ...Appellant/Petitioner

Vs.

The Regional Transport Officer,
Perundurai, Erode District. ...Respondent/Respondent

Writ Appeal filed against the Order Dated 03.11.2014 in
W.P.No.27198 of 2014.

PRAYER IN W.P.No.27198 of 2014:-Writ Petition filed under
Article 226 of the Constitution of India, Praying to issue a
Writ of Certiorarified Mandamus to call for the records the
impugned order in Na.Ka.No.12373/A1/2014 dated 04.04.2014 passed
by the respondent herein and quash the same and consequently
direct the respondent to register the petitioners LMV GV D-Max
Crew Cab as own use vehicle.

For Appellant:- Mr.T.Sundaravadanam

For respondent:- Mr.P.S.Sivashanmugasundaram, Spl.G.P.

JUDGMENT

(Judgement of the Court was made by HULUVADI G. RAMESH,J.)

Heard Mr.T.Sundaravadanam, learned counsel for the appellant
and Mr.P.S.Sivashanmuga Sundaram, learned Special Government
Pleader for the respondent.

2. It appears that as against the order of the learned Single Judge, the appellant has filed the present writ appeal, raising the main ground that the core object of inventing the model ISUZU D-Max crew cab is to prevent the genuine users of the motor vehicle for having two separate vehicles for travelling and transporting the goods and to prevent pollution and that this vehicle is specially made with a combination of two in one model to suit the needs of the owners of the vehicle and therefore, the order of the Transport Commissioner classifying it under Section 2(47) of the Motor Vehicles Act and defined as a transport vehicle cannot be sustained.

3. On a perusal of the records placed before this court, it is seen that the appellant is a Private limited company, who are authorised dealer for Hyundai Motors. According to them, they purchased a four wheeler light goods vehicle manufactured by Isuzu and they want to register the vehicle as a personal use vehicle. However, the respondent rejected the request by order dated 04.04.2014 and challenging the same, writ petition has been filed raising a plea that impugned order is ultra vires of Section 2(47) of the Motor Vehicles Act, 1988 (Act).

4. It is the contention of the petitioner that similar to Tata Model Motor Vehicle registered for personal use, viz., Xenon, the vehicle manufactured by Isuzu D-Max crew cab is a private vehicle and therefore, it cannot be defined as Transport Vehicle. The learned counsel, produced a photograph of the said Tata Model Motor Vehicle viz., "Xenon" bearing Reg.No.TN-09-BF-6784.

5. We have gone through the order passed in W.P.No.27198 of 2014, wherein the learned Single Judge pointed out that there is no terminology or definition as a own use vehicle under the provisions of the Motor Vehicles Rules, which expression appears to have been a invention of the petitioner or at best a colloquial usage and not a statutory definition; therefore, on that score itself, the petitioner's prayer is liable to be rejected. The learned Single Judge further pointed out that a goods vehicle comes under the category of transport vehicle as defined under Section 2(47) of the Act and the said vehicle has been defined/classified as a transport vehicle by orders of the Transport Commissioner, Chennai, by proceedings dated 27.02.2013.; in such circumstances, the petitioner cannot insist that such a vehicle should be registered as a non-transport vehicle ignoring the classification done by the statutory authority; furthermore, there is no definition or terminology used under the Act or Rules as "own use vehicle", and it appears to be the petitioner's invention. The learned Single Judge also pointed out that the petitioner would state that he wants to use the vehicle in his personal use; the Registering Authority is not preventing the petitioner from using the

vehicle for his personal use, but as per the approval granted, the petitioner's vehicle has to be registered as a transport vehicle, as it falls within the definition of Section 2(47) of the Act and the Motor Vehicle Tax has to be remitted as per the schedule of rates fixed for transport vehicle.

6. The argument of the learned counsel for the appellant is that when the model does not come within the meaning of Section 2(47) of the Motor Vehicles Act, this has to be examined by the respondent/authority, much less the vehicle as personal use.

7. It is pertinent to note that when the vehicle is registered as Transport Vehicle, the regular Quarterly Tax, Annual Tax etc. payable for the said Motor Vehicle, is excessive than the Private use vehicle. Further, from the records placed herein, we perused the photographs of the Tata Model Motor Vehicle viz., "Xenon" bearing Reg.No.TN-09-BF-6784 and accordingly, we are of the view that Isuzu D-Max model vehicle of the Petitioner is similar to that of the Xenon model (TATA Motors) vehicle, which has been registered as Private vehicle and therefore, the petitioner's vehicle could be considered for classification under Private Vehicle. Further, we are of the considered view that the said classification has to be arrived at by the respondent/authority after looking into the documents, if any provided by the petitioner, in support of their contention.

8. In view of the foregoing reasons, we are inclined to remand the matter to the respondent for de novo consideration. Accordingly, the order of the learned Single Judge is set aside and the matter is remitted back to the Regional Transport Officer, Perundurai, Erode, to consider the other instances relied on by the petitioner i.e., Tata Motors Xenon Model vehicle, which is registered as Private vehicle and arrive at a interpretation as to whether the petitioner's vehicle is of similar design and size and if there is sufficient data and materials available, shall consider the same in detail and if there are reasons to hold it appropriate, the respondent shall register it as Private vehicle, if there is no other impediment. The above said exercise shall be carried out by the respondent within a period of two months from the date of receipt of a copy of this order. This Writ Appeal is disposed of with the above observation. No costs. Connected MP is closed.

nvsri

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Regional Transport Officer, Perundurai,
Erode District.

+ 1 cc to M/s.R.S.KIRUBAKARAN, Advocate Sr 39732

+ 1 cc to The Govt.Pleader, Sr 39955

KR/8/8/16

W.A.No.219 of 2015



WEB COPY